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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 DANIEL BERUMEN,  
12 Plaintiff,

13 v.

14 T. JONES, et al.,  
15 Defendants.  
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No. 2:23-CV-0898-TLN-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to  
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

19 On August 8, 2023, the Court issued an order addressing the sufficiency of  
20 Plaintiff's complaint. See ECF No. 10. The Court determined that Plaintiff's complaint states  
21 cognizable Eighth Amendment safety claims against Defendants Jones, Carrasco, Mayfield, and  
22 D'Angelo arising from an incident on November 16, 2022, at California State Prison –  
23 Sacramento, when these defendants returned Plaintiff to his cell despite warnings that Plaintiff's  
24 cellmate – Alen – posed a risk of danger to Plaintiff. See id. The Court also determined that  
25 Plaintiff's remaining claims of excessive force by Defendant Jones and other claims against  
26 Defendants Brown, Cameron, Arana, Valine, Stratton, Gocheva, and Lynch are insufficient. See  
27 id. Plaintiff was provided leave to amend and cautioned that, if no amended complaint was filed  
28 within the 30-day time period provided therefor, the action would proceed on Plaintiff's safety

claims against Defendants Jones, Carrasco, Mayfield, and D'Angelo and that the Court would recommend that all other claims and defendants be dismissed. See id. As of November 2, 2023, Plaintiff had not filed an amended complaint and the Court directed service on Defendants Jones, Carrasco, Mayfield, and D'Angelo consistent with the August 8, 2023, order. See ECF No. 12. The Court now recommends dismissal of all remaining claims and defendants.

Based on the foregoing, the undersigned recommends as follows:

1. This action proceed on Plaintiff's complaint, ECF No. 1, as to Plaintiff's Eighth Amendment safety claim against Defendants Jones, Carrasco, Mayfield, and D'Angelo.

2. Plaintiff's deliberate indifference claim against Defendant Jones be DISMISSED for failure to state a claim.

3. Plaintiff's claims against Defendants Brown, Cameron, Arana, Valine, Stratton, Gocheva, and Lynch be DISMISSED for failure to state a claim.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: January 9, 2024



DENNIS M. COTA  
UNITED STATES MAGISTRATE JUDGE